



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2015-0666; FRL-9937-17-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
District of Columbia; Regulation to Limit Nitrogen Oxides Emissions from Large Non-
Electric Generating Units**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the District of Columbia Department of Energy and Environment (DOEE). This revision caps emissions of nitrogen oxides (NO_x) from large non-electric generating units (non-EGUs) to meet the requirements of EPA's NO_x SIP Call. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2015-0666 by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: fernandez.cristina@epa.gov.
- C. Mail: EPA-R03-OAR-2015-0666, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only

accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2015-0666. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted

material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in www.regulations.gov or may be viewed during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of Energy and Environment, Air Quality Division, 1200 1st Street NE., 5th floor, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814-2308, or by e-mail at powers.marilyn@epa.gov.

SUPPLEMENTARY INFORMATION: On June 19, 2015, DOEE submitted, as a revision to its SIP, a regulation to limit NO_x emissions from the non-EGUs in the District that are subject to EPA's NO_x SIP call.

I. Background

On October 27, 1998 (63 FR 57356), EPA issued a finding that required 22 states and the District of Columbia to submit SIPs to address the regional transport of ground level ozone that was significantly contributing to nonattainment or interfering with maintenance for the 1-hour and 8-hour ozone NAAQS in downwind areas, known as the NO_x SIP Call. The October 27, 1998 rulemaking action established a model trading rule under 40 CFR part 96 that states could adopt to comply with the reduction requirements of the NO_x SIP Call, commonly referred to as the NO_x Budget Trading Program (NBTP). The NBTP established under the NO_x SIP Call applied to electric generating units (EGUs) greater than 25 megawatts electric (25 MWe) and

non-EGUs (large industrial boilers and turbines) with a maximum rated heat input capacity greater than 250 million British thermal units per hour (mmbtu/hr). To comply with the NO_x SIP Call, the District submitted a SIP revision that incorporated by reference the 40 CFR part 96 model trading rule. On November 1, 2001 (66 FR 55099), the revision was approved into the District of Columbia SIP.

On May 12, 2005 (70 FR 25162), EPA promulgated the Clean Air Interstate Rule (CAIR), which required 28 states and the District of Columbia to reduce NO_x and sulfur dioxide (SO₂) emissions that were significantly contributing to downwind nonattainment and interfering with maintenance of the 1997 8-hour ozone standard and the 1997 fine particulate matter (PM_{2.5}) annual standard. The May 12, 2005 rulemaking established model trading rules for EGUs that states could adopt to comply with their reduction obligations under CAIR. The NO_x SIP Call requirements continued to apply, and the CAIR model trading rules included a CAIR NO_x ozone season trading program that was coordinated with the NO_x SIP Call, replacing the NBTP as it applied to EGUs for those states that chose to participate in the CAIR trading program. In addition, as part of their CAIR SIP, states had the option of expanding the applicability provisions of the CAIR NO_x ozone season trading program to include the non-EGUs that were trading under the NBTP. Thus, a state that elected to have non-EGUs participate in the CAIR NO_x ozone season trading program would meet its NO_x SIP Call obligations for both the EGUs and non-EGUs that were formerly trading under the NBTP through the CAIR trading program.

On April 28, 2006 (71 FR 25328), EPA promulgated Federal implementation plans (FIPs) for all States covered by CAIR in order to ensure that the emission reductions required by CAIR were

achieved on schedule. The CAIR FIPs, which applied only to EGUs, required participation in the CAIR trading programs. The CAIR FIP trading programs imposed essentially the same requirements as, and were integrated with, the respective CAIR SIP trading programs. Thus a state subject to the CAIR FIP would be meeting its NO_x SIP Call requirements with respect to its EGUs. Upon approval of a SIP revision implementing CAIR, a state's CAIR FIP would be withdrawn.

Subsequently, EPA discontinued the NBTP in 2008. The District of Columbia, however, did not submit a CAIR SIP. Therefore it became subject to the CAIR FIP in January 2009, and its NO_x SIP Call reductions for EGUs that were trading in the NBTP were met by the CAIR NO_x ozone season trading program under the FIP.¹ However, because the CAIR FIP did not have an option for inclusion of non-EGUs as trading participants, the District was required to submit a SIP revision to demonstrate compliance with its NO_x SIP Call state budget for non-EGUs, in accordance with 40 CFR part 51.121.

II. Summary of SIP Revision

On June 19, 2015, DOEE submitted a SIP revision that addresses NO_x reductions from its non-EGUs to meet its obligations under the NO_x SIP Call. The submission removes, from the District's SIP, regulation Title 20 DCMR Chapter 10 - Nitrogen Oxides Emissions Budget

¹ On January 1, 2015, the trading programs under the Cross-State Air Pollution Rule (CSAPR) replaced the trading programs under CAIR. EPA had promulgated CSAPR to replace CAIR after the D.C. Circuit remanded CAIR to EPA in 2008. *See North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008). *See also* 76 FR 48208 (August 8, 2011) (promulgating CSAPR). After litigation on the merits of CSAPR, EPA began implementing CSAPR in 2015. *See EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). *See also* 79 FR 71663 (December 3, 2014) (interim final rulemaking adjusting CSAPR's implementation dates). CSAPR does not apply to the District of Columbia. The District has no EGUs meeting the applicability criteria under CSAPR since the only EGU in the District permanently shut down in 2012. With this shut down, the District therefore also no longer has any EGU obligations under the NO_x SIP Call.

Program. Sections 1000 through 1013 of 20 DCMR Chapter 10 comprised the District's Ozone Transport Commission (OTC) NO_x Budget Program, which preceded the NO_x SIP Call trading program, and section 1014 incorporated by reference the NBTP. This submission replaces this regulation with revised Chapter 10 - Air Quality - Non-EGU Limits on Nitrogen Oxides Emissions. The revised Chapter 10 regulation establishes a 25 ton ozone season NO_x emissions cap on applicable non-EGUs² in the District, and allocates the cap to the non-EGUs located at the U. S. General Services Administration Central (GSA) Heating and Refrigeration Plant, with a reallocation required whenever a new non-EGU in the District becomes subject to the NO_x SIP Call. The regulation also requires continuous emissions monitoring (CEMs) of NO_x emissions, recordkeeping and reporting pursuant to 40 CFR part 75 to ensure compliance with the District's non-EGU emissions cap. The submission includes a revision to an associated definition and an abbreviation in the District's regulations to ensure consistency with NO_x SIP Call requirements. The submission also removes the obsolete requirements in 20 DCMR Chapter 10 for the OTC NO_x Budget Program because the program ended in 2003 upon the start of the EPA NBTP under the NO_x SIP Call.

Under section 110(l) of the CAA, EPA may not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement under section 110 of the CAA. EPA finds the proposed removal of the regulations for the discontinued OTC and NO_x SIP Call trading programs from the District's SIP will not interfere with attainment or reasonable further progress of any NAAQS nor interfere with any other applicable CAA requirement. First, the revision to

² Applicable non-EGUs are the non-EGUs that were subject to the NO_x SIP Call, including large industrial boilers and turbines with a maximum rated heat input capacity greater than 250 mmbtu/hr.

the SIP merely removes outdated provisions from the SIP (i.e., the NBTP and OTC program) which are no longer effective. Second, the District's emissions budget under the NOx SIP Call was more stringent than the budget under the OTC NOx Budget Program thus providing for greater NOx reductions and protection of the NAAQS so removal of the OTC program has no effect on the NAAQS. Likewise, the CAIR NOx Ozone Season trading program budget was designed to replace the NBTP for EGUs and was more stringent than the NOx SIP Call budget, thus providing greater NOx reductions and protection of the NAAQS than the NBTP. As the District no longer has any EGUs subject to the NOx SIP Call nor to CSAPR which replaced CAIR, removal of the NBTP from the SIP has no effect on NOx emissions in the District. Finally, approval of this proposed SIP revision will maintain the NOx emission reduction requirements of the NOx SIP Call for the District's non-EGUs and allow the District to meet its remaining NOx SIP Call emissions budget. As the District no longer has any EGUs, the District has no further obligations under CSAPR, CAIR or the NOx SIP Call regarding EGUs. Therefore, removal of the previous trading programs from the District's SIP does not interfere with attainment or reasonable further progress on any NAAQS nor interfere with any applicable requirement under section 110 of the CAA.

III. Proposed Action

EPA's review of this material indicates that the submittal is adequate to address the emission reduction requirements of the non-EGUs under the NOx SIP Call and is in accordance with requirements in CAA section 110 and its implementing regulations. EPA is proposing to approve the District of Columbia SIP revision, submitted on June 19, 2015, that establishes a 25 ton ozone season NOx emissions cap for non-EGUs in the District. EPA is soliciting public

comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this proposed rulemaking action, EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference revised District of Columbia regulation Title 20 DCMR, Environment, Chapter 10 – Air Quality – Non –EGU Limits on Nitrogen Oxides Emissions, and the revised definition of “Fossil fuel-fired” in Chapter 1, General Rules. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or may be viewed at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this action proposing approval of the District of Columbia regulation to limit NO_x emissions from non-EGUs subject to the NO_x SIP Call and approval of a related definition and abbreviation, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 et seq.

Dated: November 6, 2015.

Shawn M. Garvin,
Regional Administrator,
Region III.

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